IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 499 OF 2005

Shetkari Sahakari Sangh Ltd. ... Appellants

V/s

Vinayak Sheshgiri Pai & ors. ... Respondents

Mr. A.S. Desai for the appellants.

Mr. V.S. Gokhale for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 18TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Kolhapur dated 26.2.2004 allowing the appeal and setting aside the judgment and decree passed by the Trial Court in R.C.S. No. 944 of 1986.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff has filed the suit for declaration and possession alleging that part of the plaintiff's

property was encroached upon by the defendants and hence possession of the encroached portion was sought for.

Defendants contested the suit inter-alia submitting that they had purchased the property in the year 1985 and they had no occasion nor intention to encroach upon the plaintiff's property and, therefore, sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the defendants had encroached upon the suit property to the extent as alleged by the plaintiff and hence decreed the suit.

5. The appeal was carried to the District Court. The learned Addl. District Judge, after hearing both parties, came to the conclusion that the lower Court had erred in appreciating the available evidence and was of the view that the plaintiff had not proved title over the suit property nor had proved alleged encroachment on their property and hence the appeal came to be allowed and the appeal was dismissed. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in

this appeal. The judgments of the Trial Court as well as the lower appellate Court are sufficient to show that the issues involved were purely issues of fact based on the available documentary evidence pertaining to the map drawn pending the suit of the suit proeprty as well as the map which were annexed to the sale deed of the concerned parties. The learned counsel for the appellant sought to raise question of law to the effect that the lower appellate Court did not take into account the document of sale deed of the plaintiff and solely relied upon the defendants' sale deed and, therefore, did not properly appreciated the available evidence and, as such, the lower appellate Court erred in holding that there was no encroachment proved on record.

7. However, perusal of the judgment of the lower appellate Court indeed discloses quite a different story. The lower appellate Court Judge has not only taken into account the entire evidence on record including the plaintiff's sale deed as well as the map annexed thereto but also discussed elaborately the map drawn on behalf of the plaintiff by witness Mr. Benadikar, Architect and has concluded that the said witness who had drawn plaintiff's map was of no use for the plaintiff as his evidence was not conclusive in

order to show if there was any encroachment over the plaintiff's property made by the defendants as alleged. The available record also shows that there was some acquisition on part of the land with road widening, however, the plaintiff has conspicuously remained silent regarding what part of open space was acquired by the Collector for the purpose of road widening and if it was so, obviously the alleged encroachment cannot be pin-pointed even by the plaintiff's own witness Mr. Benadikar nor it has been shown in the map drawn by him.

8. Be that as it may, all the issues are issues of fact and lower appellate Court is seen to have properly appreciated the entire evidence on record in proper perspective. The argument that the plaintiff's evidence is not properly appreciated holds no water and, therefore, such an argument appears to be devoid of any merits.

9. Under the circumstances, I do not see any reason for the interference in the findings recorded by the lower appellate Court and, therefore, the appeal stands dismissed with no order as to costs.

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